the English language could be described as a lottery. Once these two things are proved then the presumptions arise that the lottery in question is a public lottery then in progress and that the person found in possession of the paper is assisting in it and it is for the accused to produce, if he can, evidence in rebuttal.

In cases of this type the prosection frequently and quite properly rely upon the evidence of detectives and other persons who by reason of their experience have special knowledge of methods of gambling. This sort of evidence is not, strictly speaking, the evidence of experts as that expression is used in the Evidence Ordinance and it is admissible not under section 45 but under sections 49 and 98 of that Ordinance. As regards its admissibility and its effect I would quote the following passage from the judgment of Sir John Beaumont, C.J. (as he then was) in the Bombay case of *Harilal Gordhan v. Emperor*[4] :—

"It may be that under that section (49) a police officer might give evidence that he had had a long experience amongst people who indulged in satta gambling in a particular district, and from that experience, supported by instances which he should be prepared to give so as to establish his means of knowledge, he was satisfied that a system or code prevailed among such persons, and he might then express an opinion (which would be relevant under the section) that the slips in question were prepared in accordance with that system or code and had a certain meaning"

and the following passage from the judgment of Brown, Ag. C.J. in the Singapore case of *Sim Ah Song & Anor. v. Rex*[5] in which His Lordship in using the word "expert" was including not only persons whose evidence is admissible by reason of section 45 but also persons whose evidence is admissible by reason of sections 49 and 98 :—

"The business of an expert witness is to draw upon the store of his knowledge and experience in order to explain some matter which his experience should qualify him to understand. He is quite entitled to express his opinion, which indeed is the natural corollary of his explanation. But a bare expression of his opinion has no evidential value at all. Unless he gives an explanation which supplies the understanding of the subject which the Court lacks, the Court is in no better position than it was before to determine, and if the Court acts upon a bare expression of the expert's opinion the determination of the question becomes that of the expert and not of the Court."

As a footnote to this latter passage I would add the following observation of Terrell, Ag. C.J. in the Singapore case of *Rex v. Soh Eng Chiang*[6] :—

"It is certainly not the duty of a magistrate to supplement the case for the prosecution, but when the evidence is sufficient, but not properly understood, it is always open to a magistrate to question the witness further and ascertain further details for the purpose of satisfying himself upon any point about which he may feel a doubt."

What it came to in the present case was this. The Magistrate had before him the paper which has been described and what he had to determine was whether it was a memorandum of stakes or wagers in or relating to a lottery. That was a question to be determined by him and not by any witness. If the answer was 'Yes' then the presumptions of section 11 operated against the accused. If the answer was 'No' then they did not operate against the accused. The material on which he had to decide the question consisted of the paper itself and the evidence of the Chinese detective-sergeant. If the sergeant had given evidence, as no doubt he well might have done, that he had special means (which he described) of knowing the habits of persons who conducted and assisted in conducting lotteries, that persons who collected subscriptions to lotteries of a particular sort kept records of these subscriptions, and that the paper before the Court in his opinion was such a record of subscriptions to a lottery which consisted in the subscriber placing a stake upon three digits selected by him in the the expectation that his stake would be returned to him a specified number of times over in the event of the three digits selected by him being the last three digits of the winning number of a sweepstake which was to be determined by the drawing of lots, then it would clearly have been open to the Magistrate to find that the paper was a memorandum of stakes in a lottery. If he had so found then the presumptions under section 11 would have arisen and it would have been for the accused to rebut them.

But the evidence of the sergeant did not go quite as far as that. His evidence combined with the actual entries on the paper was sufficient ground for holding, unless and until there was some other evidence to cast doubt on such a conclusion, that the paper was a record of some sort of betting transactions but if judicial notice be not taken of the nature of the 1,000 characters lottery it fell short of supporting the conclusion that the bets recorded on the paper related to a lottery within the meaning of the Enactment. That being so his evidence fell short of enabling the assistance of section 11 to be invoked and without the assistance of that section it was not open to the prosecution on the rest of the evidence to say that a *prima facie* case had been made out.

The appeal is accordingly dismissed.

*Appeal dismissed.*

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## WONG LIANG NGUK (f) v. PUBLIC PROSECUTOR.

[A. C. J. (Thomson, J.) September 18, 1953]

[Ipoh — Criminal Appeal No. 49 of 1953]

*Gaming — Common Gaming Houses Enactment (Cap. 47), ss. 4(i)(c), 11, 16, 17, 18, 19 and 20 —*

*Search without warrant — Whether lack of authority render the evidence inadmissible — Assisting in carrying on a public lottery — Presumption.*

In a prosecution under section 4(i)(c) of the Common Gaming Houses Enactment (Cap. 47 F.M.S.) for assisting in carrying on a public lottery, where documents proved to relate to a lottery were found in the accused's car, which was searched by a police officer, who had no authority to search under any of the provisions of common Gaming Houses Enactment, the lack of such authority does not render the evidence inadmissible.

[**Editorial Note**:— The Common Gaming Houses Enactment (Cap. 47) has been repealed and replaced by Common Gaming Houses Ordinance, No. 26 of 1953; sections 4(i)(c), 11, 16, 17, 18, 19 and 20 are substantially re-enacted by the new Ordinance.]

*Cases referred to* :—

(1) *Public Prosecutor v. Lee Ee Teong, ante* p. 244.

(2) *Saminathan v. Public Prosecutor* (1937) M.L.J. 39; (1936) F.M.S.L.R. 198.

CRIMINAL APPEAL.

*M. S. Mahendran* for the appellant.

*I. T. Davies* (Federal Counsel) for the respondent.

**Thomson, J.** delivering oral judgment said : — This appellant was convicted of assisting in carrying on a public lottery in contravention of section 4(i) (c) of the Common Gaming Houses Enactment.

What she was said to be doing was knowingly carrying in a motor car, of which she was the driver and sole occupant, a number of books containing the records of stakes relating to the 1,000 characters lottery. She was convicted and sentenced to pay a fine of $2,000 or to 8 months' simple imprisonment in default of payment.

Against that conviction and sentence she has now appealed.

With regard to the conviction, there was evidence that she was found in possession of three books containing a number of figures in Roman form and a number of Chinese characters and there was so-called 'expert' evidence connecting the entries in these books with what is commonly known as the "1,000 characters lottery", and explaining the nature of that lottery. The defence was not that the books were innocent documents, documents capable of bearing an innocent construction, but that the appellant was unaware of their significance and was unaware of their presence in the motor car.

The Magistrate accepted the evidence for the prosecution and rejected the defence and I must say I fail to see any reason for interfering with his conclusions.

For the benefit of other Magistrates, however, and for the benefit of persons concerned in such cases, I think, I should say something about the two principal grounds of appeal.

In the first place, it was said that the evidence of the so-called 'expert'; a Chinese Assistant Superintendent of Police, was largely evidence of opinion and was not admissible under section 45 of the Evidence Ordinance. That is very true but as I had occasion to point out in an earlier case this morning (*Public Prosecutor v. Lee Ee Teong*[1]) such evidence though not admissible under section 45 is clearly admissible under sections 49 and 98 of the Evidence Ordinance.

The second point with which I wish to deal is this. When the appellant's car was stopped and searched, it is admitted that the Police Officer who did so was not entitled to do so by any of the provisions of the Common Gaming Houses Enactment. He claimed, probably rightly, to be entitled to do so by virtue of the provisions of the Police Ordinance but it was argued that as he did not search in accordance with the provisions of the Common Gaming Houses Enactment the articles which he found, the three books, were not admissible in evidence in a prosecution under that Enactment.

This is wrong. Generally speaking, (I say generally speaking, because I do not feel it necessary to go into certain difficult questions relating to privilege) the fact that evidence is unlawfully obtained does not affect its admissibility (See *Taylor* on *Evidence*, 11th Ed. para 922). If the Police Officer in this case had no authority to search then no doubt he would have been open to some sort of civil action but the question of his authority to search is completely irrelevant to the admissibility in evidence of his statement of what he found in the course of that search. That, I think, is abundantly clear as a matter of general principle and in particular relation to this type of case it was accepted as long ago as 1936 by Aitken, J., in the case of *Saminathan v. Public Prosecutor*[2].

Sections 16, 17 and 18 of the Common Gaming Houses Enactment serve two purposes.

The first is that they protect any police officer who acts in accordance with them.

The second is that if they are strictly complied with and in the course of a search made under them certain articles are found then the presumptions arise which are set out in sections 19 and 20, though it must be remembered that the presumptions contained in section 11 are clearly not dependent upon compliance with sections 16, 17 or 18.

If, then, section 16, 17 or 18 is complied with not only is any police officer who acts under it protected

but the presumptions in the succeeding section arise. If none of the sections is complied with the police officer must look elsewhere for his protection (which no doubt he will find in the Police Ordinance) and the presumptions in the succeeding sections do not arise, but whether these sections are complied with or not the fact that anything has been found in the possession of an accused person and the thing found itself are admissible in evidence, always provided, of course, they have some connection with the case.

I have no hesitation in dismissing the appeal against conviction.

As regards sentence, the accused is a first offender, it is possible on the evidence to take the view that she was an agent and not a principal and admittedly the fine of $2,000 is a heavy one. If the case were an isolated one I might be prepared to say the fine is too heavy. It is not, however, an isolated case. I am not prepared to say that in itself this 1,000 characters lottery is necessarily a bad thing and I have a very strong suspicion that were it stamped out to-morrow something else of the sort would take its place. But there is no doubt that at the present time it is being carried on in such a widespread way that the law itself is being brought into contempt, and it is my duty to do all in my power to see that that does not happen. If the law continues to be widely and publicly flouted, as it is being flouted, Magistrates before whom these cases come will have to give serious consideration to sending offenders to prison, and sending them to prison for long periods.

In the circumstances I am not prepared to reduce the sentence and the appeal against it is also dismissed.

*Appeal dismissed.*

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## ONG HIN WAH v. DENTAL BOARD, FEDERATION OF MALAYA.

[A. C. J. (Buhagiar, J.) September 29, 1953]

[Penang — Civil Appeal No. 6 of 1953]

*Dentist — Registration of — Registration of Dentists Ordinance, 1948, ss. 5(1)(g) and 15(1)(a) — Removal of name from register by Dental Board — Necessity to act judicially.*

This was an appeal against the decision of the Dental Board, Federation of Malaya, given on August 15th, 1952 by virtue of which the name of the appellant was removed from the Dental Register. The grounds of appeal were: (i) the Dental Board was wrong in holding that the appellant had obtained registration by fraudulent or incorrect statements; (ii) the Dental Board was wrong in deciding to remove the appellant's name from the Register of Dentists without allowing him to state his case and in so doing the Dental Board acted improperly and without regard to the principles of natural justice.

**Held:** (1) the Dental Board had not acted judicially in exercising the powers under section 15(1)(a) of the Registration of Dentists Ordinance, 1948; (2) section 5(1)(g) of the Ordinance requires that a person should have practised dentistry in any State or Settlement in the Federation for a period of three years immediately preceding the 15th day of April 1948 and as the appellant had not so practised he did not have the necessary qualifications for registration.

*Cases referred to :—*

(1) *Board of Education v. Rice* (1911) A.C. 179.

(2) *Local Government Board v. Arlidge* (1915) A.C. 120.

(3) *General Medical Council v. Spackman* (1943) A.C. 627.

(4) *Partridge v. General Council of Medical Education & Registration of the United Kingdom* (1890) Q.B.D. 90.

CIVIL APPEAL.

*Yong Pung How* for the appellant.

*F. G. Pooley* for the respondent.

*Cur. Adv. Vult.*

**Buhagiar, J.** : — This is an appeal against the decision of the Dental Board, Federation of Malaya given on 15th August, 1952 by virtue of which the name of the appellant was removed from the Dental Register. The Board struck off the appellant's name without communicating with him or giving him an opportunity of being heard. The action of the Board was taken under section 15(1)(a) of the Registration of Dentists Ordinance, 1948 (F. of M. No. 7 of 1948). The grounds of appeal are :—

1. The Dental Board was wrong in holding that the appellant had obtained registration by fraudulent or incorrect statements. The only statements made by the appellant in obtaining registration were contained in his application for registration dated 6th January, 1951 and all such statements were correct.

2. The Dental Board was wrong in deciding to remove the appellant's name from the Register of Dentists without allowing him to state his case, and in so doing the Dental Board acted improperly and without regard to the principles of natural justice.

With regard to the second ground of appeal Counsel for the appellant submitted that before his name could be removed from the Register the appellant was entitled to be heard; he referred to *Board of Education v. Rice*[1], *Local Government Board v. Arlidge*[2] and *General Medical Council v. Spackman*[3]. It is clear that if the powers conferred on the Board under the said section are judicial or quasi-judicial and not merely ministerial the Board was wrong in coming to a decision without observing one of the fundamental principles of natural justice, *audi alteram partem*. In *Partridge v. General Council of Medical Education & Registration of the United Kingdom*[4] Lord Esher, M.R., at page 96 said :—